IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.914 OF 2005

M/s.Harinagar Sugar Mills Ltd. ...Petitioner.

Versus

Mr.Gabbar Yadav & Ors. ...Respondents.

.....

Mr.C. J. Sawant with Smt. A.P. Purav for the Petitioner.

Mr. Arshad Shaikh with Mr. V. M. Parkar for Respondent No.1 and 2.

.....

CORAM : DR. D.Y. CHANDRACHUD, J.

April 11, 2005.

P.C.:

The First and Second Respondents were employed as Security Guards in the establishment of the Petitioners. They have filed a complaint before the Labour Court on 1st February 2003 under

Items 1(a), (b), (d) and (f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, complaining of an unlawful termination of service. An application for interim relief was also filed on 1st February 2003. The Petitioners filed a reply to the application for interim relief on 23rd May 2003. Almost for a year thereafter, the First and Second Respondents filed an application before the Labour Court stating that since the Petitioners have falsely claimed that the services of the Respondents have not been terminated and that they had left service, the Respondents were ready and willing to resume duties forthwith. This application was allowed by the Labour Court by its order dated 30th September 2004 which was affirmed in revision.

2. Counsel appearing on behalf of the Petitioners urged that the Labour Court passed an order of reinstatement at the interim stage of the complaints upon an application filed more than a year after the original application for interim relief. At the hearing of this petition, I had enquired of Counsel whether the Petitioners are ready

and willing to pay to the First and Second Respondents an amount equivalent to their last drawn wages during the pendency of the complaints in substitution of the impugned order of reinstatement so that the main complaints may be expedited. Counsel appearing on behalf of the Petitioners agreed to this but submitted that the Petitioners would be ready and willing to deposit the amount before the Labour Court which the First and Second Respondents may be permitted to withdraw subject to their filing an affidavit that they are not employed elsewhere. Counsel appearing on behalf of the First and Second Respondents submitted that the affidavit which his clients are required to furnish should be to the effect that they are not gainfully and regularly employed since from the very nature of things, it cannot be expected that the First and Second Respondents would not have pursued some marginal employment in order to make their ends meet during the period of unemployment. This suggestion has been acceptable to the Petitioners.

3. In the circumstances, the following order is passed in

substitution of the impugned order of the Labour Court dated 30th September 2004 as confirmed by the Industrial Court, with the consent of Counsel:

(1)The petitioners agree and undertake to deposit before the Labour Court, an amount equivalent to the last drawn wages of the First and Second Respondents which parties are agreed shall be paid at the rate of Rs.105/- per day on the basis of 26 working days for every month. The amount as aforesaid shall be deposited commencing from the month of March 2005. The amount of arrears for the month of March 2005 shall be deposited on or before 25th April 2005. The payment of each succeeding month shall be deposited on or before the 7th day of each month;

(2)The First and Second Respondents should be at liberty to withdraw the amount so deposited by the Petitioners every month subject to their filing an affidavit that they are not in any manner gainfully and regularly employed;

(3)The hearing of the Complaints (Complaint (ULP) 59 and 61 of

2003) is expedited and the Labour Court is requested to endeavour an early disposal of the complaints preferably on or before 30th November 2005.

4. The Petition shall stand disposed of in the aforesaid terms and the order of the Court below shall stand modified in the aforesaid terms.

.....